

Representative Michael S. Kennedy proposes the following substitute bill:

ADMINISTRATION OF ANESTHESIA AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael S. Kennedy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends professional licensing acts in the Division of Occupational and Professional Licensing Act to require informed consent and certain patient monitoring of patients who are sedated and establishes a database for adverse events.

Highlighted Provisions:

This bill:

- ▶ requires the Department of Health to:
 - create a database of adverse events from the administration of sedation or anesthesia in outpatient settings; and
 - publish a report regarding the number of adverse events by types of provider and facility and submit a yearly report to the Health and Human Services Interim Committee;
- ▶ requires health care providers who administer certain sedation or anesthesia to a patient:
 - to obtain informed consent from the patient; and
 - to report adverse events from the sedation or anesthesia to the Department of Health;
- ▶ makes it unprofessional conduct to fail to report an adverse event from sedation or



26 anesthesia;

27 ▶ provides whistle blower protections to a health care provider who reports an
28 adverse event; and

29 ▶ requires a health care provider who administers sedation or anesthesia intravenously
30 to have access to a crash cart during the anesthesia procedure.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **58-5a-102**, as last amended by Laws of Utah 2015, Chapter 230

38 **58-31b-501**, as last amended by Laws of Utah 2006, Chapter 291

39 **58-67-501**, as last amended by Laws of Utah 2015, Chapter 110

40 **58-68-501**, as last amended by Laws of Utah 2015, Chapter 110

41 **58-69-501**, as last amended by Laws of Utah 2015, Chapter 343

42 **63I-1-226**, as last amended by Laws of Utah 2016, Chapters 89, 170, 279, and 327

43 ENACTS:

44 **26-1-40**, Utah Code Annotated 1953



46 *Be it enacted by the Legislature of the state of Utah:*

47 Section 1. Section **26-1-40** is enacted to read:

48 **26-1-40. Reports of anesthesia adverse events- whistle blower protections.**

49 (1) (a) Beginning January 1, 2018, the department shall create a database of deaths and
50 adverse events from the administration of sedation or anesthesia in outpatient settings in the
51 state.

52 (b) The database required by Subsection (1)(a) shall include reports submitted by
53 health care providers under Sections [58-5a-102](#), [58-31b-501](#), [58-67-501](#), [58-68-501](#), and
54 [58-69-501](#).

55 (2) The department shall adopt administrative rules under Title 63G, Chapter 3, Utah
56 Administrative Rulemaking Act, regarding:

- 57 (a) the format of the reports; and
- 58 (b) what constitutes a reportable adverse event, which shall include at least the
- 59 administration of intravenous sedation or anesthesia when there is:
- 60 (i) an escalation of care required for the patient; or
- 61 (ii) a rescue of a patient from a deeper level of sedation than was intended.
- 62 (3) (a) Information the department receives under this section that identifies a
- 63 particular individual is subject to Title 63G, Chapter 2, Government Records Access and
- 64 Management Act, and the federal Health Insurance Portability and Accountability Act of 1996.
- 65 (b) Beginning July 1, 2018, and on or before July 1 of each year thereafter, the
- 66 department shall:
- 67 (i) publicly report:
- 68 (A) the number of deaths and adverse events reported under Subsection (1);
- 69 (B) the type of health care providers, by license category and specialty, who submitted
- 70 reports under Subsection (1) and who administered the sedation or anesthesia that resulted in
- 71 an adverse event; and
- 72 (C) the type of facility in which the death or adverse event took place; and
- 73 (ii) submit a report to the Health and Human Services Interim Committee with the
- 74 information required by this Subsection (3).
- 75 (4) An employer of a health care provider who submits a report under this section may
- 76 not take an adverse employment action against the reporting health care provider if the
- 77 employment action is based on the provider submitting a report under this section.
- 78 (5) (a) This section sunsets in accordance with Section [63I-1-226](#).
- 79 (b) The sunset review of this section shall include an analysis of:
- 80 (i) the number and types of adverse events reported under this section;
- 81 (ii) the types of health care providers and locations involved in the adverse events;
- 82 (iii) the adequacy of sedation and anesthesia requirements in Sections [58-5a-102](#),
- 83 [58-31b-501](#), [58-67-501](#), [58-68-501](#), and [58-69-501](#) related to the adverse events reported under
- 84 this section; and
- 85 (iv) the adequacy of the reporting requirements under this section and the need for
- 86 additional protections for health care providers who report events under this section.
- 87 Section 2. Section **58-5a-102** is amended to read:

88 **58-5a-102. Definitions.**

89 In addition to the definitions under Section 58-1-102, as used in this chapter:

90 (1) "Board" means the Podiatric Physician Board created in Section 58-5a-201.

91 (2) "Indirect supervision" means the same as that term is defined by the division by
92 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.93 (3) "Medical assistant" means an unlicensed individual working under the indirect
94 supervision of a licensed podiatric physician and engaging in specific tasks assigned by the
95 licensed podiatric physician in accordance with the standards and ethics of the podiatry
96 profession.97 (4) "Practice of podiatry" means the diagnosis and treatment of conditions affecting the
98 human foot and ankle and their manifestations of systemic conditions by all appropriate and
99 lawful means, subject to Section 58-5a-103.

100 (5) "Unlawful conduct" includes:

101 (a) the conduct that constitutes unlawful conduct under Section 58-1-501; and

102 (b) for an individual who is not licensed under this chapter:

103 (i) using the title or name podiatric physician, podiatrist, podiatric surgeon, foot doctor,
104 foot specialist, or D.P.M.; or

105 (ii) implying or representing that the individual is qualified to practice podiatry.

106 (6) "Unprofessional conduct" includes, for an individual licensed under this chapter:

107 (a) the conduct that constitutes unprofessional conduct under Section 58-1-501;

108 (b) communicating to a third party, without the consent of the patient, information the
109 individual acquires in treating the patient, except as necessary for professional consultation
110 regarding treatment of the patient;111 (c) allowing the individual's name or license to be used by an individual who is not
112 licensed to practice podiatry under this chapter;113 (d) except as described in Section 58-5a-306, employing, directly or indirectly, any
114 unlicensed individual to practice podiatry;115 (e) using alcohol or drugs, to the extent the individual's use of alcohol or drugs impairs
116 the individual's ability to practice podiatry;117 (f) unlawfully prescribing, selling, or giving away any prescription drug, including
118 controlled substances, as defined in Section 58-37-2;

- 119 (g) gross incompetency in the practice of podiatry;
- 120 (h) willfully and intentionally making a false statement or entry in hospital records,
121 medical records, or reports;
- 122 (i) willfully making a false statement in reports or claim forms to governmental
123 agencies or insurance companies with the intent to secure payment not rightfully due;
- 124 (j) willfully using false or fraudulent advertising; ~~and~~
- 125 (k) conduct the division defines as unprofessional conduct by rule made in accordance
126 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act[-]; and
- 127 (l) administering sedation or anesthesia intravenously to a patient without:
- 128 (i) first obtaining consent from the patient in writing, which shall include:
- 129 (A) the type of sedation or anesthesia being administered;
- 130 (B) the identity and training of the person who is performing the procedure for which
131 the sedation or anesthesia will be administered;
- 132 (C) the identity and training of the person who will be administering the sedation or
133 anesthesia;
- 134 (D) a list of all responsibilities during the procedure of the person who will be
135 administering the sedation or anesthesia; and
- 136 (E) patient monitoring that will occur during the sedation or anesthesia, including
137 monitoring equipment that will be used;
- 138 (ii) reporting any adverse event under Section [26-1-40](#); and
- 139 (iii) having access during the procedure to an advanced cardiac life support crash cart
140 with equipment that is regularly maintained according to guidelines established by the
141 American Hospital Association.

142 Section 3. Section **58-31b-501** is amended to read:

143 **58-31b-501. Unlawful conduct.**

144 "Unlawful conduct" includes:

- 145 (1) using the following titles, names or initials, if the user is not properly licensed or
146 certified under this chapter:
- 147 (a) nurse;
- 148 (b) licensed practical nurse, practical nurse, or L.P.N.;
- 149 (c) medication aide certified, or M.A.C.;

- 150 (d) registered nurse or R.N.;
- 151 (e) registered nurse practitioner, N.P., or R.N.P.;
- 152 (f) registered nurse specialist, N.S., or R.N.S.;
- 153 (g) registered psychiatric mental health nurse specialist;
- 154 (h) advanced practice registered nurse;
- 155 (i) nurse anesthetist, certified nurse anesthetist, certified registered nurse anesthetist, or
- 156 C.R.N.A.; or
- 157 (j) other generally recognized names or titles used in the profession of nursing;
- 158 (2) (a) using any other name, title, or initials that would cause a reasonable person to
- 159 believe the user is licensed or certified under this chapter if the user is not properly licensed or
- 160 certified under this chapter; and
- 161 (b) for purposes of Subsection (2)(a), it is unlawful conduct for a medication aide
- 162 certified to use the term "nurse"; ~~and~~
- 163 (3) conducting a nursing education program in the state for the purpose of qualifying
- 164 individuals to meet requirements for licensure under this chapter without the program having
- 165 been approved under Section [58-31b-601](#)[?]; and
- 166 (4) administering sedation or anesthesia intravenously to a patient without:
- 167 (i) first obtaining consent from the patient in writing, which shall include:
- 168 (A) the type of sedation or anesthesia being administered;
- 169 (B) the identity and training of the person who is performing the procedure for which
- 170 the sedation or anesthesia will be administered;
- 171 (C) the identity and training of the person who will be administering the sedation or
- 172 anesthesia;
- 173 (D) a list of all responsibilities during the procedure of the person who will be
- 174 administering the sedation or anesthesia; and
- 175 (E) patient monitoring that will occur during the sedation or anesthesia, including
- 176 monitoring equipment that will be used;
- 177 (ii) reporting any adverse event under Section [26-1-40](#); and
- 178 (iii) having access during the procedure to an advanced cardiac life support crash cart
- 179 with equipment that is regularly maintained according to guidelines established by the
- 180 American Hospital Association.

181 Section 4. Section **58-67-501** is amended to read:

182 **58-67-501. Unlawful conduct.**

183 (1) "Unlawful conduct" includes, in addition to the definition in Section [58-1-501](#):

184 (a) buying, selling, or fraudulently obtaining, any medical diploma, license, certificate,
185 or registration;

186 (b) aiding or abetting the buying, selling, or fraudulently obtaining of any medical
187 diploma, license, certificate, or registration;

188 (c) substantially interfering with a licensee's lawful and competent practice of medicine
189 in accordance with this chapter by:

190 (i) any person or entity that manages, owns, operates, or conducts a business having a
191 direct or indirect financial interest in the licensee's professional practice; or

192 (ii) anyone other than another physician licensed under this title, who is engaged in
193 direct clinical care or consultation with the licensee in accordance with the standards and ethics
194 of the profession of medicine; ~~or~~

195 (d) entering into a contract that limits a licensee's ability to advise the licensee's
196 patients fully about treatment options or other issues that affect the health care of the licensee's
197 patients~~[-]~~; or

198 (e) administering sedation or anesthesia intravenously to a patient without:

199 (i) first obtaining consent from the patient in writing, which shall include:

200 (A) the type of sedation or anesthesia being administered;

201 (B) the identity and training of the person who is performing the procedure for which
202 the sedation or anesthesia will be administered;

203 (C) the identity and training of the person who will be administering the sedation or
204 anesthesia;

205 (D) a list of all responsibilities during the procedure of the person who will be
206 administering the sedation or anesthesia; and

207 (E) patient monitoring that will occur during the sedation or anesthesia, including
208 monitoring equipment that will be used;

209 (ii) reporting any adverse event under Section [26-1-40](#); and

210 (iii) having access during the procedure to an advanced cardiac life support crash cart
211 with equipment that is regularly maintained according to guidelines established by the

212 American Hospital Association.

213 (2) "Unlawful conduct" does not include:

214 (a) establishing, administering, or enforcing the provisions of a policy of accident and
215 health insurance by an insurer doing business in this state in accordance with Title 31A,
216 Insurance Code;

217 (b) adopting, implementing, or enforcing utilization management standards related to
218 payment for a licensee's services, provided that:

219 (i) utilization management standards adopted, implemented, and enforced by the payer
220 have been approved by a physician or by a committee that contains one or more physicians; and

221 (ii) the utilization management standards does not preclude a licensee from exercising
222 independent professional judgment on behalf of the licensee's patients in a manner that is
223 independent of payment considerations;

224 (c) developing and implementing clinical practice standards that are intended to reduce
225 morbidity and mortality or developing and implementing other medical or surgical practice
226 standards related to the standardization of effective health care practices, provided that:

227 (i) the practice standards and recommendations have been approved by a physician or
228 by a committee that contains one or more physicians; and

229 (ii) the practice standards do not preclude a licensee from exercising independent
230 professional judgment on behalf of the licensee's patients in a manner that is independent of
231 payment considerations;

232 (d) requesting or recommending that a patient obtain a second opinion from a licensee;

233 (e) conducting peer review, quality evaluation, quality improvement, risk management,
234 or similar activities designed to identify and address practice deficiencies with health care
235 providers, health care facilities, or the delivery of health care;

236 (f) providing employment supervision or adopting employment requirements that do
237 not interfere with the licensee's ability to exercise independent professional judgment on behalf
238 of the licensee's patients, provided that employment requirements that may not be considered to
239 interfere with an employed licensee's exercise of independent professional judgment include:

240 (i) an employment requirement that restricts the licensee's access to patients with
241 whom the licensee's employer does not have a contractual relationship, either directly or
242 through contracts with one or more third-party payers; or

243 (ii) providing compensation incentives that are not related to the treatment of any
244 particular patient;

245 (g) providing benefit coverage information, giving advice, or expressing opinions to a
246 patient or to a family member of a patient to assist the patient or family member in making a
247 decision about health care that has been recommended by a licensee;

248 (h) in compliance with Section 58-85-103:

249 (i) obtaining an investigational drug or investigational device;

250 (ii) administering the investigational drug to an eligible patient; or

251 (iii) treating an eligible patient with the investigational drug or investigational device;

252 or

253 (i) any otherwise lawful conduct that does not substantially interfere with the licensee's
254 ability to exercise independent professional judgment on behalf of the licensee's patients and
255 that does not constitute the practice of medicine as defined in this chapter.

256 Section 5. Section 58-68-501 is amended to read:

257 **58-68-501. Unlawful conduct.**

258 (1) "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

259 (a) buying, selling, or fraudulently obtaining any osteopathic medical diploma, license,
260 certificate, or registration; and

261 (b) aiding or abetting the buying, selling, or fraudulently obtaining of any osteopathic
262 medical diploma, license, certificate, or registration;

263 (c) substantially interfering with a licensee's lawful and competent practice of medicine
264 in accordance with this chapter by:

265 (i) any person or entity that manages, owns, operates, or conducts a business having a
266 direct or indirect financial interest in the licensee's professional practice; or

267 (ii) anyone other than another physician licensed under this title, who is engaged in
268 direct clinical care or consultation with the licensee in accordance with the standards and ethics
269 of the profession of medicine; [or]

270 (d) entering into a contract that limits a licensee's ability to advise the licensee's
271 patients fully about treatment options or other issues that affect the health care of the licensee's
272 patients[-]; or

273 (e) administering sedation or anesthesia intravenously to a patient without:

- 274 (i) first obtaining consent from the patient in writing, which shall include:
275 (A) the type of sedation or anesthesia being administered;
276 (B) the identity and training of the person who is performing the procedure for which
277 the sedation or anesthesia will be administered;
278 (C) the identity and training of the person who will be administering the sedation or
279 anesthesia;
280 (D) a list of all responsibilities during the procedure of the person who will be
281 administering the sedation or anesthesia; and
282 (E) patient monitoring that will occur during the sedation or anesthesia, including
283 monitoring equipment that will be used;
284 (ii) reporting any adverse event under Section [26-1-40](#); and
285 (iii) having access during the procedure to an advanced cardiac life support crash cart
286 with equipment that is regularly maintained according to guidelines established by the
287 American Hospital Association.
- 288 (2) "Unlawful conduct" does not include:
289 (a) establishing, administering, or enforcing the provisions of a policy of accident and
290 health insurance by an insurer doing business in this state in accordance with Title 31A,
291 Insurance Code;
292 (b) adopting, implementing, or enforcing utilization management standards related to
293 payment for a licensee's services, provided that:
294 (i) utilization management standards adopted, implemented, and enforced by the payer
295 have been approved by a physician or by a committee that contains one or more physicians; and
296 (ii) the utilization management standards does not preclude a licensee from exercising
297 independent professional judgment on behalf of the licensee's patients in a manner that is
298 independent of payment considerations;
299 (c) developing and implementing clinical practice standards that are intended to reduce
300 morbidity and mortality or developing and implementing other medical or surgical practice
301 standards related to the standardization of effective health care practices, provided that:
302 (i) the practice standards and recommendations have been approved by a physician or
303 by a committee that contains one or more physicians; and
304 (ii) the practice standards do not preclude a licensee from exercising independent

305 professional judgment on behalf of the licensee's patients in a manner that is independent of
306 payment considerations;

307 (d) requesting or recommending that a patient obtain a second opinion from a licensee;

308 (e) conducting peer review, quality evaluation, quality improvement, risk management,
309 or similar activities designed to identify and address practice deficiencies with health care
310 providers, health care facilities, or the delivery of health care;

311 (f) providing employment supervision or adopting employment requirements that do
312 not interfere with the licensee's ability to exercise independent professional judgment on behalf
313 of the licensee's patients, provided that employment requirements that may not be considered to
314 interfere with an employed licensee's exercise of independent professional judgment include:

315 (i) an employment requirement that restricts the licensee's access to patients with
316 whom the licensee's employer does not have a contractual relationship, either directly or
317 through contracts with one or more third-party payers; or

318 (ii) providing compensation incentives that are not related to the treatment of any
319 particular patient;

320 (g) providing benefit coverage information, giving advice, or expressing opinions to a
321 patient or to a family member of a patient to assist the patient or family member in making a
322 decision about health care that has been recommended by a licensee;

323 (h) in compliance with Section 58-85-103:

324 (i) obtaining an investigational drug or investigational device;

325 (ii) administering the investigational drug to an eligible patient; or

326 (iii) treating an eligible patient with the investigational drug or investigational device;

327 or

328 (i) any otherwise lawful conduct that does not substantially interfere with the licensee's
329 ability to exercise independent professional judgment on behalf of the licensee's patients and
330 that does not constitute the practice of medicine as defined in this chapter.

331 Section 6. Section 58-69-501 is amended to read:

332 **58-69-501. Unlawful conduct.**

333 "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

334 (1) administering anesthesia or analgesia in the practice of dentistry or dental hygiene

335 if:

336 (a) the individual does not hold a current permit issued by the division authorizing that
337 individual to administer the type of anesthesia or analgesia used; or

338 (b) administering sedation or anesthesia intravenously to a patient without:

339 (i) first obtaining consent from the patient in writing, which shall include:

340 (A) the type of sedation or anesthesia being administered;

341 (B) the identity and training of the person who is performing the procedure for which
342 the sedation or anesthesia will be administered;

343 (C) the identity and training of the person who will be administering the sedation or
344 anesthesia;

345 (D) a list of all responsibilities during the procedure of the person who will be
346 administering the sedation or anesthesia; and

347 (E) patient monitoring that will occur during the anesthesia, including monitoring
348 equipment that will be used;

349 (ii) reporting any adverse event under Section 26-1-40; and

350 (iii) having access during the procedure to an advanced cardiac life support crash cart
351 with equipment that is regularly maintained according to guidelines established by the
352 American Hospital Association.

353 (2) practice of dental hygiene by a licensed dental hygienist when not under the
354 supervision of a dentist, or under a written agreement with a dentist who is licensed under this
355 chapter and who is a Utah resident, in accordance with the provisions of this chapter; or

356 (3) directing or interfering with a licensed dentist's judgment and competent practice of
357 dentistry.

358 Section 7. Section **63I-1-226** is amended to read:

359 **63I-1-226. Repeal dates, Title 26.**

360 (1) Section 26-1-40 is repealed July 1, 2021.

361 [(+)] (2) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed
362 July 1, 2025.

363 [(2)] (3) Section 26-10-11 is repealed July 1, 2020.

364 [(3)] (4) Section 26-21-23, Licensing of non-Medicaid nursing care facility beds, is
365 repealed July 1, 2018.

366 [(4)] (5) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1,

- 367 2024.
- 368 [~~(5)~~] (6) Title 26, Chapter 36a, Hospital Provider Assessment Act, is repealed July 1,
- 369 2019.
- 370 [~~(6)~~] (7) Title 26, Chapter 36b, Inpatient Hospital Assessment Act, is repealed July 1,
- 371 2021.
- 372 [(7)] (8) Section 26-38-2.5 is repealed July 1, 2017.
- 373 [(8)] (9) Section 26-38-2.6 is repealed July 1, 2017.
- 374 [(9) Title 26, Chapter 52, Autism Treatment Account, is repealed July 1, 2016.]
- 375 (10) Title 26, Chapter 56, Hemp Extract Registration Act, is repealed July 1, 2021.